

IN SENATE OF THE UNITED STATES.

MAY 25, 1848.

Submitted, and ordered to be printed.

Mr. NILES made the following

REPORT:

[To accompany bill S. No. 273.]

*The Committee on the Post Office and Post Roads, to whom was referred the petition of Frink and Haddock, report:*

That in the month of February, 1847, a number of mail routes were abandoned by O. Hinton, the contractor, and that your petitioners were invited to bid for said routes, and that they did enter into contracts with H. L. Stewart, postmaster at Chicago, for transporting the mail on route No. 4272, from Chicago to Ottawa, for the sum of \$33 per trip both ways; and for route No. 4268, from Chicago to Milwaukee, for the sum of \$19 per trip both ways; and for route No. 4269, from Chicago to Galena, for \$50 per trip. And the petitioners continued to carry the mails on said routes until some time in March, or April, when the postmaster at Chicago was instructed by the Post Office Department to advertise and let said routes, but no bids being made for the performance of said service at a lower rate than the price stipulated to be paid to the petitioners, the petitioners were permitted to continue to carry the mails until the routes were regularly re-let in May and June following.

And it also appears that the petitioners, in February, 1847, entered into a contract with Wm. H. Fessenden, postmaster at Peoria, for carrying the mail on route No. 4240, from Peoria to Ottaway, for the sum of \$25 per trip going and returning, and that they continued to carry the mail on said routes until the same was regularly re-let to E. S. Alvord, in June following.

Said contracts were entered into by said postmasters, for and in behalf of the Post Office Department, and notice of the arrangements communicated to the department, and the petitioners were never informed by the said postmasters, or the department, that said contracts were disavowed by the Postmaster General, and the petitioners performed the service faithfully, and as they claim, under the expectation of being paid according to their contracts.

But when they applied for payment it was refused on the ground that the said postmasters had no authority to make the contracts they did, and that the price was unreasonable and extravagant. But the Postmaster General appears finally to have recognised the service and paid in part for it, according to a rule he adopted, by taking the sum paid at a subsequent letting of the routes, and adding thereto thirty-three and one-third per cent., on account of its being temporary service. The petitioners now claim the balance to make them up the full sum to which they were entitled by the rate of pay stipulated in their contracts.

The Postmaster General, after the payment made by him, agreed to give the petitioners an opportunity to offer testimony to show that the price stipulated in the contracts was no more than a fair and reasonable compensation, and the petitioners procured and offered numerous affidavits from intelligent and respectable men in that section of the country, which show that, in the judgment of the witnesses, the price was not more than a just compensation, considering the temporary nature of the service, the badness of the roads at that season of the year, and the little travel at that season, as the travel does not commence until the opening of the lake navigation. But, on re-considering the case with this testimony, the Postmaster General refused to make any additional allowance.

The principal question arising in this case is, whether these contracts were binding on the department. The Postmaster General says: "the only obligation created by these arrangements of the postmasters, is to pay a fair and just compensation for the temporary service." This seems to be admitting the contracts, so far as respects the service, but disavowing them in regard to the price. This would be virtually making a new contract. The principle of implied contracts seems to be as applicable to the government, as to individuals. Would it not be manifestly unjust, if not a breach of faith, for the department to permit the petitioners to go on performing the service for three months, under the expectation that they were to be paid according to the contracts they had made, and then to disavow the contracts? Was it not the duty of the Postmaster General, if he disapproved of these arrangements, immediately to have notified the petitioners that their contracts were disavowed, and to have made other arrangements for transporting the mail? It is believed to be usual, in similar cases, for postmasters to make temporary arrangements for carrying the mail, and immediately to inform the department what they have done, and their acts are either approved, or disavowed. By not disavowing them, but acquiescing in the arrangements, justice would seem to require that the department should fulfil the contracts, and pay for the service at the rates stipulated therein.

With these views, the committee report a bill to pay the petitioners their claim according to their contracts, deducting the amount which has been paid to them.